APPENDIX A

Revenue Act of 1934, c. 277, 48 Stat. 680:

SEC. 351. *SURTAX ON PERSONAL HOLDING COMPANIES.*

(a) *Imposition of Tax.*—There shall be levied, collected, and paid, for each taxable year, upon the undistributed adjusted net income of every personal holding company a surtax equal to the sum of the following:

(1) 30 per centum of the amount thereof not in excess of $100,000; plus

(2) 40 per centum of the amount thereof in excess of $100,000.

(b) *Definitions.*—As used in this title—

(1) The term "personal holding company" means any corporation (other than a corporation exempt from taxation under section 101, and other than a bank or trust company incorporated under the laws of the United States or of any State or Territory, a substantial part of whose business is the receipt of deposits, and other than a life-insurance company or surety company) if—(A) at least 80 per centum of its gross income for the taxable year is derived from royalties, dividends, interest, annuities, and (except in the case of regular dealers in stock or securities) gains from the sale of stock or securities, and (B) at any time during the last half of the taxable year more than 50 per centum in value of its outstanding stock is owned, directly or indirectly, by or for not more than five individuals. For the purpose of determining the ownership of stock in a personal holding company—(C) stock

> owned, directly or indirectly, by a corporation, partnership, estate, or trust shall be considered as being owned proportionately by its shareholders, partners, or beneficiaries; (D) an individual shall be considered as owning, to the exclusion of any other individual, the stock owned, directly or indirectly, by his family, and this rule shall be applied in such manner as to produce the smallest possible number of individuals owning, directly or indirectly, more than 50 per centum in value of the outstanding stock; and (E) the family of an individual shall include only his brothers and sisters (whether by the whole or half blood), spouse, ancestors, and lineal descendants (U. S. C., Title 26, Sec. 331).

Substantially the same provisions are contained in Section 351 of the Revenue Act of 1936, c. 690, 49 Stat. 1648.

Treasury Regulations 86, promulgated under the Revenue Act of 1934:

> ART. 351–2. *Classification of a personal holding company.*—
>
> * * * * *
>
> It is the nature of the gross income and the ownership of the outstanding stock which determine the classification as a personal holding company, and the several conditions with respect to both must be satisfied to bring a corporation within the classification. Gross income must be determined for the entire taxable year and the ownership of the stock outstanding must be determined according to its ownership at any time during the last half of the taxable year. * * *

From the standpoint of the nature of the gross income, a corporation comes within the definition of a personal holding company for any taxable year when 80 percent or more of its gross income for such taxable year was derived from the following sources:

(1) *Royalties.*—The term "royalties" includes amounts received for the use of or for the privilege of using patents, copyrights, secret processes and formulas, good will, trade-marks, trade brands, franchises, and other like property. It does not include rents, nor overriding royalties received by an operating company. As used in this paragraph the term "overriding royalties" means amounts received from a sublessee by the operating company which originally leased and developed the natural resource property in respect of which such overriding royalties are paid.

* * * * *

Substantially the same provisions are contained in Articles 351–1 and 351–2 of Treasury Regulations 94, promulgated under the Revenue Act of 1936.

APPENDIX B

S. Rep. No. 558, 73rd Cong., 2d Sess., p. 14 (on Revenue Act of 1934) (1939–1 Cum. Bull. (Part 2) 586, 596).

> The House bill includes in the income within the 80 percent clause income from "rents." A great part of *real estate business* is done by small family corporations. These partake more of the nature of operating companies than mere holding companies. Your committee is of the opinion that it is unwise to include such companies within the category of personal holding companies. Therefore, the word "rents" is omitted from the definition. [Italics supplied.]

H. Rep. No. 1546, 75th Cong., 1st Sess., pp. 4, 6 (on Revenue Act of 1937) (1939–1 Cum. Bull. (Part 2) 704, 706, 708).

> Subsection (a) includes as items of personal holding company income "dividends, interest, royalties, and annuities." These items are the same as those used for the purpose of the 80 per cent test under existing law. "Royalties" as used herein has the same meaning [Revenue Act of 1936] as in the case of royalties referred to in section 351 of existing law and, therefore, includes income from copyrights.
>
> * * * * *
>
> Subsection (g) includes as personal holding company income, rents which do not constitute 50 per cent or more of the gross income. * * * Under existing law, rents

are excluded from the 80 per cent classification. This was done principally so as not to interfere with bona fide and legitimate operating companies whose business consisted *of the ownership and operation of office buildings, apartment houses, etc.* * * * On the other hand, it will protect the bona fide *real estate corporation* and other corporations renting property and deriving 50 per cent or more of their gross income from rents. "Rents" as here used is defined in its broadest sense and includes such items as charter fees, etc., and is not limited to rent of real property. [Italics supplied.]

U. S. GOVERNMENT PRINTING OFFICE: 1943